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no request

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November 2, 1999

Assistant Secretary John Berry  
c/o Document Management Unit  
The Department of the Interior  
1849 C Street, NW Mailstop-7229  
Washington, DC 20240

Re: Invitation Soliciting Public Comments Regarding Hawaiian Issues

Dear Mr. Berry:

As a native-born citizen of the State of Hawaii, I would like to submit the following written comments concerning your Department's so-called "reconciliation efforts" concerning "Native Hawaiians" as described in the announcement published at the Department's web site, [www.doi.gov/news/991020.html](http://www.doi.gov/news/991020.html). Although you and your colleagues are motivated by good will, "reconciliation" could all too easily become another code word for demands for special privileges for a racially defined group. Such special privileges would be antithetical to democracy and contrary to history.

As you will find during your visit, the currently fashionable slogan is "sovereignty" and your invitation, apparently limited to persons claiming to be "Native Hawaiian," is likely to elicit loud and lengthy comments from a range of self-proclaimed "sovereignty groups." I do not represent any group and I do not want to take up any of your time in the public meetings. However, as someone born and raised in Hawaii, I offer some anticipatory comments on what you will hear during your visit. I also enclose an article I wrote some years ago when the fashionable slogan was "reparations." The article provides citations of authorities for the historical facts that I summarize in this letter.

### **How "Sovereignty" Is Used**

Words mean what they are used to mean. Because "sovereignty," is used inconsistently, it can have no single, consistent meaning. Indeed, its vagueness is its value: people who agree on nothing else can agree to use "sovereignty" as a slogan and so can appear to agree on substance (until they begin to discuss specifics). If someone could decree a precise definition, everyone else would abandon "sovereignty" for something vaguer.

Although irremediably vague, "sovereignty" is not utterly meaningless. Its

varying uses in the current debate are contradictory precisely because they point to contrary proposals regarding the same subjects. A rough checklist of the word's uses suggests two broad themes: individual freedom of choice and collective political power.

Individual freedom of choice encompasses freedoms of thought, expression, religion, and association. It includes the right to try to learn a culture and a language and so make them your own. The federal and state Constitutions guarantee all of these rights equally to everyone. However, the right to choose does not entail the right to be subsidized. I may desire a lifestyle that requires buying things I cannot afford, like a mansion or a farm, but I have no right to force you to pay for my choices with your taxes.

The second theme, political power, includes the right to vote, to run for office, and to try to persuade others about political issues. Every adult citizen of the United States and of Hawai'i has these rights. In a democracy, sovereignty in this political sense is shared. No one can be all-powerful unless everyone else is powerless. Each of us is sometimes in the minority, unable to imagine how the majority elected such an idiot or enacted such a foolish law. But with raucous debate, together we exercise the political power of sovereign national and state governments. Hawaiians, like their fellow citizens, participate in these public debates, including debates about how to use public land.

Thus, in our individual and collective exercise of self-government, we are all sovereign now.

### **We All Have Sovereignty But Some Demand Exclusivity**

Those who demand something more for themselves are really demanding exclusivity. Their basic problem is arithmetic. Having defined themselves as a minority, they can seize power only if they can somehow disenfranchise the majority. The competing advocacy groups have contradictory plans for doing this. Some want to tear Hawai'i away from America to form an independent country. Some aim to create a government modeled on those of certain American Indian tribes. Others prefer a special state agency with restrictions on voting and holding office. Each of these plans would give the new minority government exclusive power over some or all of Hawai'i's public lands and funds.

All of these plans would restrict voting and holding office to an exclusive, hereditary group. The competing factions split over how to define the group that will be treated better than everyone else.

Some definitions are exclusively racial. The privileged group could be limited to "Native Hawaiians" in the sense specified in the Hawaiian Homes Commission Act, that is, those having at least 50% Hawaiian ethnic ancestry. Other proposals discriminate in favor of a class of persons descended from the inhabitants of Hawai'i in 1778 (the year Captain Cook arrived). "Descendants of the inhabitants of Hawai'i in 1778" singles out a racial or ethnic group as clearly as does "descendants of the inhabitants of sub-Saharan Africa in 1492."

Other definitions add political criteria to the racial criteria. One plan extends the privileged class to include persons of other races who pass a test of political correctness defined by members of the racial elite. In a democracy the people choose the government, but under this plan the government chooses the people. Those who disagree with the government would be stripped of their citizenship and would become aliens in their own homes. Another proposal defines a hereditary aristocracy consisting of all descendants of the citizens of the Hawaiian Kingdom in 1893. That excludes the descendants of the Asian immigrants who constituted most of the Kingdom's population in 1893 but who were not citizens. It also excludes everyone whose family arrived here later. Racial discrimination combined with political discrimination is still racial discrimination. Recall how the government imprisoned Japanese Americans during World War II because of their ancestral and "political" connections to an enemy country.

Discrimination based on ancestry is generally conceded to be undemocratic and unfair. However, the advocates of various versions of "Hawaiian Sovereignty" are not racists. They sincerely believe that there are nondiscriminatory justifications for privileging "Hawaiians" (however defined) over all others. There are five common justifications but none of them works.

### **Five Failed Arguments for Exclusivity**

The first common justification is that the overthrow of the monarchy in 1893 and the annexation of Hawai'i to the United States in 1898 were undemocratic because they were not supported by the majority at the time. Historically, this was true: annexation did not have the support of a majority of the people in Hawaii in the 1890s. This argument appeals to the democratic principle of majority rule, a principle that was not followed anywhere in the 1890s but that should have been.

However, if the principle of majority rule should have been followed then, it should be followed now. The principle of majority rule cannot justify minority rule by the descendants of people who were in power long ago. No one is entitled to extra power because some of his ancestors once belonged to a ruling class. For instance, the heirs of French King Louis XVI are not entitled to the land and power he lost when he lost his crown and head.

The second justification is, in essence, "We were robbed." The argument is that, before 1893, the lands of Hawai'i belonged to the Hawaiian people. Overthrowing the Kingdom of Hawai'i with the assistance of American troops, a small faction seized power and later transferred the Government Lands and Crown Lands of the Kingdom to the United States. In justice that stolen property should be returned.

But everyone who was involved in the events of 1893 and 1898 is dead. The exclusive powers demanded in the name of "Hawaiian Sovereignty" would go to people who were not alive then. This is not a matter of inheriting private property. It is a claim for hereditary political power. Private land was not seized as a result of the Revolution. Individual ethnic Hawaiians and the group of ethnic Hawaiians did not own the Government Lands; the government did. For instance, an individual could not have sold

or willed a personal share of the Government Lands to another. Nor could he have excluded anyone from any part of the Government lands. Nor did ethnic Hawaiians, individually or as a group, have any special legal privileges to the use of those lands. As the term "sovereignty" suggests, what was at stake in 1893 was political power over the government and hence over the Government Lands and the Crown Lands (which had come under control of a government commission in 1865).

Most ethnic Hawaiians had no power to lose in 1893. They were a minority in Hawai'i and most of them could not even vote. An oligarchy of the richest men governed the Kingdom. Being Hawaiian in the ethnic sense was neither necessary nor sufficient to be a subject of the Kingdom and being a subject was neither necessary nor sufficient to be a voter. All who were born in Hawaii were native-born subjects of the Hawaiian Kingdom, no matter where their ancestors came from. Naturalization was offered to everyone who stayed at least two years and promised to obey the law. Immigrants who did not wish to give up their original citizenship could become "denizens," entitled to the full rights of subjects, including voting and holding office if they met the other qualifications for political rights. However, most subjects were denied the right to vote on grounds of gender, race or poverty.

Political power is still at stake today. People alive now have a democratic right to decide by majority vote how government land should be used now. The "we were robbed" argument does not justify hereditary political power for a minority. No one deserves more than equality.

The third justification draws an analogy to American Indian tribes. It contends that, as a general rule, all "Native Americans" have a right to tribal land and to tribal governments with political rights restricted to tribal members. Hawaiians are "Native Americans." Therefore, Hawaiians have a right to form a racially restricted government and to claim some land exclusively for themselves.

However, there is no such general rule. What each Indian group has is a matter of historical happenstance. Some have tribal governments and large reservations while others have nothing. One thing that American Indians do seem to share is a conviction that they have been mistreated. Indian law is grounded in nineteenth century racial discrimination. The special laws applying to Indians are not the result of special constitutional privilege for Indians but of special "plenary" power of Congress over Indians. This was the power that Congress used to order Indian tribes rounded up at gunpoint and confined to reservations. Reclassifying ethnic Hawaiians as an "Indian tribe" would jeopardize their right to equal protection and would leave them at the mercy of any future congressional majority.

Moreover, the analogy to Indian tribes does not fit the history of Hawai'i. Hawaiians were never organized as a tribe. The Kingdom of Hawai'i was not a tribe. Tribesmen are tribesmen because their parents were tribesmen. But under the laws of the Kingdom, anyone born in Hawai'i was a citizen of the Kingdom, no matter where his family came from. The annexation of Hawai'i was not the incorporation of a tribe into

the United States with a racially defined government intact. Unlike Indian tribes on reservations, Hawaiians do not live in segregated communities that could make and enforce laws without affecting others. Neither policy nor history support extending the racially discriminatory rules of Indian law to Hawai'i by inventing a "Hawaiian Tribe."

Fourth, some argue that the Annexation and the overthrow of the Kingdom violated international law. Therefore, the United States should return power to descendants of those who held power under the Kingdom.

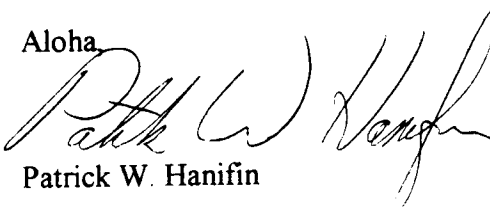
However, "international law" is an oxymoron. Each country is sovereign in the sense that it is not bound by any law that it does not accept (subject, of course, to being attacked if it angers a more powerful country). Furthermore, because there is no world government with effective power to make, interpret, and enforce international law, anyone can argue anything about it without fear of being proven wrong.

Even if international law arguments could prove something, we would have to look back to the 1890s to determine what was "illegal" at the time of the overthrow and Annexation. It is futile to try to squeeze late-twentieth century democracy into nineteenth century international law. In the 1890s the rules of international law, to the extent there were any, were made by the colonial empires and amounted to the law of the jungle: big fish eat little fish. Most governments did not even pretend to be democracies and none would have qualified by today's standards. The legitimacy of a government depended on its power to control its territory, not on its popularity. The government of the Republic of Hawai'i, although undemocratic, maintained effective control, was recognized by the major powers, and so could make a binding agreement for annexation.

Finally, some advocates cite statistics showing that on average ethnic Hawaiians have less money and more disease than some other ethnic groups. From this they conclude that the government should give all ethnic Hawaiians land, money, and political power. But why should well-off Hawaiians get special benefits while poor and sick members of other groups do not? This argument does not justify handing out exclusive benefits to a group defined by ancestry.

Reconciliation cannot be achieved by racial discrimination, however well-intentioned. Nor can it be accomplished by offering to pay anyone who honestly but inaccurately believes that he has been wronged. Having unnecessarily conceded both historical facts and moral principle, the government would face ever-escalating demands for more money, land, and power. There is no valid justification for awarding any group defined by race or ancestry any exclusive privileges or powers that are denied to other citizens. Hawaiians, along with the rest of us, are sovereign now. No one can fairly ask for more.

Aloha

A handwritten signature in dark ink, appearing to read "Patrick W. Hanifin", written in a cursive style.

Patrick W. Hanifin